



ILLINOIS COMMERCE COMMISSION

June 22, 2000

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

21st Century Telecom of Illinois, Inc.
-vs-
Illinois Bell Telephone Company
(Ameritech Illinois)

00-0219

Complaint against Illinois Bell Telephone
Company (Ameritech Illinois) under Sections
13-514 and 13-515 of the Public Utilities Act,
and Request for Emergency Relief pursuant to
Section 13-515(e).

Dear Sir/Madam:

Enclosed is a copy of the dissenting opinion to the Order entered by the
Commission on June 15, 2000, filed by Commissioner Kretschmer.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donna M. Caton".

Donna M. Caton
Chief Clerk

sc
Hearing Examiner: Ms. Moran

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| 21 st Century Telecom of Illinois, Inc. | : | |
| -VS- | : | |
| Illinois Bell Telephone Company | : | 00-0219 |
| d/b/a Ameritech Illinois | : | |
| Complaint against Illinois Bell Telephone | : | |
| Company (Ameritech Illinois) under | : | |
| Sections 13-514 and 13-515 of the Public | : | |
| Utilities Act, and Request for Emergency | : | |
| Relief pursuant to Section 13-515(e). | : | |

DISSENTING OPINION OF COMMISSIONER KRETSCHMER,
ON THE ORDER ENTERED BY THE
COMMISSION JUNE 15, 2000

I am alarmed by the Majority's finding that Ameritech did not provision AXT service to 21st Century's customers, but nonetheless concluded 21st Century did not meet its burden of proof. The Commission's finding in Count III turns the law on its head. Consequently, the finding in Count III is contrary to the evidence and rewards Ameritech for its dilatory tactics.

21st Century's complaint alleged Ameritech failed to provision AXT service from November, 1999, up until the time it filed its complaint on March 8, 2000. During this time frame, Ameritech did not correct the problem of disabling high-rise tenants from AXT service. By giving substantial weight to evidence that occurred after the complaint was filed, the Majority has abdicated its responsibility and duty to review a complaint during the time frame of the alleged violation, and now set a dangerous precedent.

The Majority's finding that Ameritech reversed its legal position regarding provisioning AXT service before any legal action was taken is completely baseless. The evidence shows 21st Century sent Ameritech a "Request for Dispute Escalation and Resolution Pursuant to Section 28.3 of the Interconnection Agreement" on December 24, 1999. (21st Century Complaint, Exhibit B.) In its request, 21st Century again reiterated the difficulty it was having with Multiple Dwelling Unit residents and the disabling of AXT service to its customers. Under its interconnection agreement with Ameritech, the two companies had 30 days to resolve disputes before problems could be resolved through litigation. It was after this notice that Ameritech changed its position and

decided to provide AXT service along with the local loops to high-rise residents with AXT service.

Despite the notification in December, the AXT problem was not resolved within the 30 day time frame. Although Ameritech did not have any technical difficulties cross connecting the local loop to the AXT frame, it did have administrative difficulties identifying which buildings subscribe to AXT service. I am troubled that the Majority is persuaded by Ameritech's specious arguments that it took over three months to ascertain that its Trunk Inventory Record Keeping System ("TIRKS"), which is used to process orders, does not contain information regarding a buildings AXT service. The record indicates that Ameritech's response to processing orders for customers with AXT service was unreasonable. Ameritech did not attempt to establish a procedure for identifying customers with AXT service until March 6, 2000, although Ameritech knew of the AXT problem in November, 1999. (Suther's Cross Ex. 2.) In light of the fact a company must notify Ameritech 48 hours in advance of its filing a complaint, the evidence indicates that Ameritech's efforts to implement its procedures for processing orders to customer's with AXT service was in response to notification that 21st Century's was filing a complaint against Ameritech.

Indeed, I find the length of time it took Ameritech to implement a method to process orders perplexing. After spending countless hours listening to Ameritech's self-praise for its expertise and state emphatically that its expertise would increase after its merger with SBC, I find it shocking that such a simple information management problem took over three months to identify and resolve. After all, the new SBC/Ameritech should have implemented most of its best practices. With its newly combined resources, SBC/Ameritech should have resolved the problem by the end of January, 2000, not the middle of March, 2000. The evidence contradicts the Majority's finding that the time it took Ameritech to remedy its administrative procedures was reasonable. It is unreasonable for a company of SBC/Ameritech's size and resources to take over three months to resolve a simple information management problem with its databases.

I am also concerned that the Majority minimized the seriousness of this problem by citing Ameritech's claim that only 58 buildings in the city of Chicago have AXT service. It is clear from the record that Ameritech is still unsure about this number. Furthermore, the number of buildings with AXT service is not the issue and should not be used to preclude 21st Century's right to compete for residential customers. Consequently, the Majority has denied those customers in buildings subscribing to Ameritech's AXT service the opportunity to choose a local telecommunications provider.

Additionally, the Majority ignored the fact that 21st Century asked Ameritech to identify the buildings with AXT service before it filed its complaint,

and that Ameritech only identified the buildings in a data request, after the complaint was filed. Had Ameritech provided the information, 21st Century would not have wasted time, resources, and money marketing to buildings with AXT service. Furthermore, it is equally troubling that the customers 21st Century tried to serve, now have a poor image of the Company because it could not provide the service it promised to those customers. These facts taken together with Ameritech's excuses constitute Ameritech's unreasonable behavior.

The Majority also has a short memory and has forgotten that this Commission found in its Order in 99-0525, that discrimination can only be determined from the perspective of the retail customer whom both the ILEC and CLEC serve. (Ill. C.C. Docket 99-0525, p. 9.) In the case at bar, a customer who has AXT service was discriminated against because Ameritech denied 21st Century the opportunity to compete, and denied the customer an opportunity to choose a local exchange carrier. From November of 1999 until Ameritech corrected some of the problem in March, there have been many customers who could not switch their telephone service without disabling their AXT service. The Order recognizes Ameritech's discriminatory behavior, yet condones Ameritech for its behavior since Ameritech appears to have corrected the problem. This outcome is unacceptable because it rewards Ameritech for anti-competitive behavior.

Additionally, the Order fails to recognize that 21st Century has a right to appear before the Commission and assert its rights under federal and state law. Although Ameritech may have corrected its "technical difficulties" in provisioning AXT service, Ameritech's egregious behavior does not excuse the fact that it violated the law. The Majority disregards the fact that Ameritech took meaningful action only when 21st Century filed a complaint. This Order drives all CLECs to file a complaint with the Commission in order to get Ameritech to live up to its obligations, but absolves Ameritech of any responsibility because it fixed the problem after the complaint was filed and now provisions AXT service to 21st Century customers. The Majority's Order tells Ameritech it is legal to discriminate against other carriers and its customers until a complaint is filed, and then if it discontinues the discrimination, the CLEC alone will pay the Commission's costs for hearing the complaint. The Majority's Order creates bad public policy and a dangerous precedent that impairs competition. The Commission is charged with fostering competition among telecommunications carrier, and the Majority failed to live up to its responsibilities and allow 21st Century a meaningful opportunity to compete.

For these reasons, I dissent.